

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Case No.: 3:19-cv-00079-MMD-WGC

EMMANUEL CABALLERO,

Plaintiff

v.

ROMEO ARANAS, et. al.,

Defendants

**Order**

Re: ECF No. 226

Plaintiff has filed a motion for an order of substitution under Federal Rule of Civil Procedure 25(d), where he seeks to substitute in Dr. Benson for the deceased Dr. Petersen insofar as Dr. Petersen was sued in her official capacity. (ECF No. 226.) Defendants filed a response. (ECF No. 240, corrected image at ECF No. 241.) Plaintiff filed a reply. (ECF No. 245.)

Rule 25(d) provides in relevant part: “An action does not abate when a public officer who is a party in an official capacity dies ...while the action is pending. The officer’s successor is automatically substituted as a party.” The Advisory Committee comments state that “public officer” comprises “Federal, State and Local officers.” Advisory Committee Notes to the 1961 Amendment.

Nevada Revised Statute 281A.160 defines a “public officer” as a person *elected or appointed* to a position which: “(a) is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and (b) involves the exercise of a public power, trust or duty.”

An prison dentist does not appear to be an elected or appointed position established by the Nevada Constitution or by statute. As such, the court agrees with Defendants that


1 Dr. Petersen was and Dr. Benson is an institutional dentist, and they are not State officers as is  
2 contemplated for automatic substitution under Rule 25(d). *See McDowell v. Hulsey*, No. 3:19-cv-  
3 00230-MMD-WGC, 2021 WL 1555332, at \*2 (D. Nev. Apr. 5, 2021), *report and*  
4 *recommendation adopted* at 2021 WL 1554324 (D. Nev. Apr. 20, 2021) (concluding that  
5 caseworker who was a former employee of NDOC was not a public officer for purposes of Rule  
6 25(d).).

7 Even if Dr. Petersen or Dr. Benson were considered “public officers” under the rule,  
8 Plaintiff has provided no evidence that Dr. Benson is Dr. Petersen’s “successor.”

9 Therefore, Plaintiff’s motion to substitute Dr. Benson for Dr. Petersen under Rule 25(d)  
10 (ECF No. 226) is **DENIED**.

11 **IT IS SO ORDERED.**

12 Dated: November 4, 2021

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14 William G. Cobb  
15 United States Magistrate Judge  
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